

ANALYSIS

This ordinance grants a proprietary petroleum pipeline franchise to the United States of America ("Franchisee"), to collect, transport, and distribute petroleum and other products for a period of fifteen (15) years.

This ordinance acknowledges that within the limits of the Federal Torts Claims Act, 28 U.S.C. sections 2671-2680, the United States of America remains fully responsible for any claim, demand, injury, or damage to any person or property resulting from operation of this franchise.

RAYMOND G. FORTNER, JR.
County Counsel

By 

GRACE V. CHANG
Senior Deputy County Counsel
Property Division

GVC:gjh

10/1/07 (requested)

10/19/07 (revised)

ORDINANCE NO. 2007-0106F

An ordinance granting a County-wide proprietary petroleum pipeline franchise to United States of America, for the collection, transportation, and distribution of petroleum for a period of fifteen (15) years.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Franchise Term, Grant.

A. The right, privilege, and franchise is granted to United States of America, ("Franchisee"), and its successors and assigns, for a period of fifteen (15) years, beginning on January 1, 2008, the effective date of this franchise, to lay, construct, reconstruct, maintain, operate, renew, repair, change the size of, remove, or abandon in place, pipes and pipelines for the collection, transportation, or distribution of petroleum, oil, gas, gasoline, or other liquid hydrocarbon products, wet gas, industrial gas, chemicals, mud, steam, water, waste water, and other liquid substances, excluding any hazardous substances or hazardous waste within the meaning of the "Comprehensive Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. section 9601 et seq., and amendments thereto, together with all manholes, valves, cathodic protection systems, appurtenances, and connections necessary or appropriate for the operation of said pipes or pipelines, including poles, conduits, wires, cables, including adjunct communications lines, and other appurtenances and equipment for telegraph or telephone lines, or both, necessary or appropriate solely for the Franchisee's operations, in, under, along, or across any and all highways as defined in

Section 16.36.080 of the Los Angeles County Code now or hereafter dedicated to public use within the unincorporated territory of the County of Los Angeles ("County"), State of California.

SECTION 2. Consideration; Payment of Fees.

Franchisee shall not be responsible for the payment of any granting fee, annual franchise fee, or other fee for the grant of, or exercise of rights under, this franchise, but shall be required to comply with all the terms and conditions hereof as consideration for the rights conveyed to Franchisee.

SECTION 3. Reports.

The Franchisee shall during the life of the franchise:

A. File with the County Chief Executive Officer ("CEO"), Director of Real Estate, on or before April 15 following the end of each calendar year, for each year during the life of the franchise, a report showing as of December 31 of the immediately preceding calendar year ("franchise report period"), the length of the Franchisee's main lines in highways in the unincorporated areas of Los Angeles, the nominal internal diameter of such main lines and the points where they enter and exit the County unincorporated highways.

B. In the report prepared pursuant to subsection 3.A above, Franchisee shall also show: any change in franchise footage since the end of the most recent franchise report period, if any, segregating such footage as to new main lines laid, old main lines removed, old main lines abandoned in place, including the internal diameter of such main lines laid, removed, and/or abandoned in place; the footage of new conduits laid

for wires, cables, telegraph, or telephone lines, old conduits removed, old conduits abandoned in place; the diameter of such conduits laid, removed, and/or abandoned in place; and the footage and internal diameter of main lines in territory annexed or incorporated since the last day of the most recent franchise report period.

SECTION 4. Indemnification, Insurance, and Bonding.

A. Notwithstanding Section 7 of this ordinance, this ordinance does not incorporate by reference those provisions in the County Master Pipeline Franchise Ordinance, Ordinance No. 11,696, requiring the Franchise to comply with standard County indemnification, insurance, and bonding requirements in conjunction with use of County rights-of-way.

B. Within the limits of the Federal Torts Claims Act, 28 U.S.C. sections 2671-2680, Franchisee shall be fully responsible for any claim, demand, injury, or damage to any person or property resulting from operation of this franchise.

C. The County shall be immediately notified by Franchisee of all discharge, release, or escape of any petroleum, oil, gas, gasoline, other liquid hydrocarbon products, wet gas, industrial gas, chemicals, steam, water, waste water, mud, or other substances from Franchisee's pipelines. All actions to investigate, remove, or remediate any substance reasonably demonstrated to be discharged, dispersed, released, or escaped from Franchisee's pipelines, and to repair or restore Franchisee's pipelines and appurtenances shall be the sole responsibility of Franchisee and shall be conducted by Franchisee or Franchisee's agents, in conformance with any and all laws, ordinances, rules, regulations, requirements, and orders whatsoever, present or future,

of the federal, state, County, or other applicable local government at Franchisee's sole cost and expense, and shall be immediately undertaken by Franchisee or Franchisee's agents. If Franchisee fails to take any action required pursuant to this section, County may, but shall not be obligated to, take all actions it deems appropriate at Franchisee's sole expense. Upon written demand by County, Franchisee shall reimburse County for all County expenses reasonably incurred in connection with County's actions including, but not limited to, all direct and indirect costs relating to investigation, remediation, and removal.

SECTION 5. Transfers and Assignments.

A. Franchisee shall not sell, transfer, assign, lease, hypothecate, place in trust, or change the control of the franchise or any part thereof (each of which is hereinafter referred to as an "assignment"), to any other person or entity ("transferee") except with the written consent of the CEO, and after the proposed transferee's payment of a transfer fee as detailed in subsection 5.G. As used in this section, "transfer" includes sale and "control" includes actual working control in whatever manner exercised.

B. Franchisee shall give notice to the CEO of any pending assignment, except as excluded in subsection 5.E, and shall provide all documents requested by the CEO, as set forth in subsection 5.F, on which the assignment is predicated. Consent to any such assignment shall only be refused if the CEO finds that Franchisee is in noncompliance with the terms and conditions of the franchise and/or that the proposed transferee, as applicable, is lacking in experience and/or financial ability to meet the

franchise obligations. Consent from the CEO shall be conditioned upon the terms and conditions set forth in the assignment documents delivered to County, the assumption by the transferee, as applicable, of all the Franchisee's covenants and obligations under the franchise, and all information provided to the CEO under subsection 5.F, below, being true and correct as of the time of submittal to the CEO. Upon receipt of such consent from the CEO, Franchisee may proceed to consummate the assignment.

C. Franchisee shall file with the CEO within thirty (30) days after the effective date of any assignment, a certified copy of the duly executed instrument(s) which officially evidences such assignment. If such duly executed instrument(s) is not filed with the CEO within thirty (30) days after the effective date of such proposed assignment, or if the conditions to consent by the CEO have not been met, then the CEO may notify the Franchisee and the proposed transferee that the assignment is not deemed approved by the County. The CEO may then administratively determine that the assignment has no force or effect or that the franchise is forfeited and the Board of Supervisors may repeal this franchise.

D. As a condition to granting consent to such assignment, the County may impose such additional terms and conditions upon this franchise and upon the proposed transferee which the CEO recommends or the Board deems to be in the public interest, which may include the assignee's requirement to submit annual franchise reports and the billing of calculated annual franchise fee to the attention of assignee, resulting in the payment of annual franchise fees. Such additional terms and conditions shall be expressed by ordinance. Nothing contained herein shall be construed to grant

Franchisee the right to complete an assignment except in the manner aforesaid. This section applies to any assignment, whether by operation of law, by voluntary act of Franchisee, or otherwise.

E. In the event any sale, transfer, exchange, assignment, divestment, or other change is effected in such a way as to give control of, or a twenty-five percent (25%) or more interest in, the facilities installed, maintained, and operated by rights granted by this franchise, to any person or persons, corporation, or partnership, consent thereof shall be required as otherwise provided in this Section 5.

F. Upon notice by Franchisee of any pending assignment, the proposed transferee shall submit an assignment application to the CEO, which shall contain at a minimum:

1. Identification of the proposed transferee which indicates the corporate or business entity organization, including the submission of copies of the corporate or business formation papers (e.g., articles of incorporation and by-laws, limited partnership agreements, operating agreements), and the names and addresses of any parent or subsidiary of the proposed transferee(s), or any other business entity owning or controlling the proposed transferee in part or in whole;

2. A current financial statement, which has been audited by a certified public accountant demonstrating conclusively to the satisfaction of the CEO that the proposed transferee has all the financial resources necessary to carry out all of the terms and conditions of the franchise. The financial statement shall include a balance sheet, profit and loss statement for at least the three (3) most recent years, and a

statement of changes in financial position; however, if the proposed transferee has been in existence for less than three (3) years, then for such period of existence;

3. A copy of the proposed agreement of sale, letter of understanding, or other documentation which details the proposed assignment ("assignment documents"); and

4. Other information which may be required by the CEO to assess the capability of the proposed transferee to operate and maintain the franchise.

G. The transfer fee paid by the proposed transferee shall be submitted with the Franchisee's request for the County's consent to any assignment described in subsection 5.A and 5.E and shall be determined as follows:

1. Consent to assignment or any other action, in which the County does not elect to modify the franchise by adoption of an amending ordinance: two thousand five hundred dollars (\$2,500).

2. Consent to assignment or any other action, in which the County elects to modify the franchise by adoption of an amending ordinance: five thousand dollars (\$5,000).

3. In the event the County's actual costs to process the proposed assignment application, including any consultant's fees incurred by the County to assist in evaluating the application, exceed the fees detailed above, proposed transferee may be required to pay any additional costs incurred by the County in processing the Franchisee's and/or proposed transferee's request for assignment. Such costs shall be

paid by the proposed transferee prior to final consideration of the request by the CEO or the Board, as applicable.

SECTION 6. Relocation of Pipelines.

In the event the County requires or decides that the Franchisee should relocate its pipelines and appurtenances (pursuant to Section 16.52.290 of the County Code), the County will notify the Franchisee of its intent in order to open discussions on funding of said project. Franchisee may elect to fund the project depending upon the purpose of the relocation and subject to the availability of funds as may be authorized and appropriated by Congress and allocated by the Department of Defense, and to the extent permitted by law. If federal funding is deemed inappropriate or unavailable, the County shall be solely responsible for and shall bear all costs or expenses incurred in relocation of the facility.

SECTION 7. Pipeline Franchise Ordinance.

In addition to the terms and conditions stated herein, and except as expressly excluded herein, this franchise is granted under all of the terms and conditions contained in the County Pipeline Franchise Ordinance, Title 16, Division 3A, of the Los Angeles County Code, as codified in 1978 and amended to date, which is incorporated herein by reference, as it may hereafter be amended. In the event the terms and conditions of this franchise conflict with the terms of the County Pipeline Franchise Ordinance, the terms and conditions hereof shall control.

SECTION 8. Effective Date.

This franchise becomes effective January 1, 2008.

SECTION 9. This ordinance shall be published in The Metropolitan News a newspaper printed and published in the County of Los Angeles.



ATTEST:

Sachi A. Hamai

Sachi A. Hamai
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

Zev Yaroslavsky
Chairman

I hereby certify that at its meeting of November 27, 2007 the foregoing ordinance was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

Ayes

Supervisors Yvonne B. Burke
Don Knabe
Michael D. Antonovich
Zev Yaroslavsky

Noes

Supervisors Gloria Molina

Effective Date: December 27, 2007

Operative Date: January 1, 2008

Sachi A. Hamai

Sachi A. Hamai
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By [Signature]
Deputy



APPROVED AS TO FORM:
RAYMOND G. FORTNER, JR.
County Counsel

By Leela Kapur
Leela Kapur
Chief Deputy County Counsel